

Applicant : Gauc et al.
Appl. No. : 10/764,056
Filed : January 23, 2004
Title : MALE STERILITY IN GRASSES OF
THE GENUS LOLIUM
Examiner : Keith O'Neal Robinson
Group Art Unit : 1638

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT
ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Mail Stop Petition

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

The above-identified application became abandoned for failure to respond to an Office Action mailed on March 13, 2006, setting a three month shortened statutory period for response. The abandonment date of this application was June 14, 2006 (i.e., the day after the expiration of the date of the period set for response). Applicants intended to extend the shortened statutory period to September 13, 2006, by payment of a three-month extension of time fee in order for it to be co-pending with application 11/520,186 filed on September 12, 2006. Applicants respectfully submit that the enclosed Statement in Support of Applicants' Petition to Revive establishes that the abandonment was unintentional, and that the entire delay in filing the required reply from the due date, until the filing of the present grantable Petition to Revive was unintentional.

APPLICANTS HEREBY PETITION FOR REVIVAL OF THIS APPLICATION

1. Proposed response and/or fee
 - a. Petitioner hereby requests a three-month extension of time under 37 C.F.R. § 1.136(a) extending the period for response to the Final Office Action mailed March 13, 2006 from June 13, 2006 to September 13, 2006. Petitioner hereby requests that the application be deemed abandoned on September 14, 2006.
 - b. The three-month extension fee of \$1110 is enclosed herewith.
2. Petition fee as set forth in 37 C.F.R. §1.17(m) is enclosed herewith.

(X) \$1620

3. The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 C.F.R. § 1.137(b) was unintentional.
- (X) Please charge any additional fees or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 8, 2009

By: 

Marc T. Morley
Registration No. 52,051
Attorney of Record
Customer No. 20,995
(619) 235-8550

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Gaue et al.
Appl. No. : 10/764,056
Filed : January 23, 2004
Title : MALE STERILITY IN GRASSES OF
THE GENUS LOLIUM
Examiner : Keith O'Neal Robinson
Group Art Unit : 1638

**STATEMENT IN SUPPORT OF APPLICANTS'
PETITION TO REVIVE UNDER 37 C.F.R. §1.137(b)**

Mail Stop Petitions

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants submit herewith a Petition to Revive under 37 C.F.R. §1.137(b). The undersigned discovered recently that the above-referenced application (hereinafter "the '056 application") unintentionally went abandoned on June 14, 2006, instead of September 14, 2006, as previously believed.

On September 12, 2006 Applicants filed divisional application 11/520,186 (hereinafter "the '186 application") claiming priority to the '056 application. Thus the abandonment date of the '056 application is pertinent to the priority claim of the '186 application and other applications in the same priority chain.

The undersigned respectfully submits that the evidence discussed herein clearly demonstrates that the abandonment of the '056 application on June 14, 2006 was unintentional. The following is a brief background.

I. Background:

On March 13, 2006, an Office Action was mailed from the Patent Office in the '056 application. On September 12, 2006 the '186 application was filed as a divisional of the '056 application. The transmittal sheet of the '186 Application, showing a claim to priority of the '056 application, is attached hereto as Exhibit A. Although September 12, 2006 was within the six-month statutory time for responding to the March 13, 2006 Office Action, a three-month extension of time fee to extend the due date from the shortened statutory period of June 13, 2006 to full statutory period of September 13, 2006 was inadvertently and unintentionally not paid. Accordingly, the '056 application went abandoned on June 14, 2006 and not on the intended date of September 14, 2006. The undersigned was unaware that the intended extension of time was not submitted.

The undersigned intended to keep the '056 application pending at least until September 13, 2006, as evidenced by the filing of the '186 divisional application on September 12, 2006 which claimed priority to the '056 application. Accordingly, the abandonment of the '056 application on June 14, 2006 was unintentional. Although the undersigned received a Notice of Abandonment for the '056 application, that notice is dated October 17, 2006, and does not recite the date on which the application was deemed abandoned by the Patent Office. The Transaction History record for the '056 application, as shown on the U.S. Patent Office's website (attached as Exhibit B), states that the '056 application was abandoned on October 16, 2006. Thus, the undersigned was not put on notice that the '056 application went abandoned on June 14, 2006, rather than on September 14, 2006.

The undersigned believed at the time of filing the '186 Application, that the '056 Application remained pending until at least September 13, 2006.

II. Unintentional Abandonment

At all relevant times, the undersigned believed that the '056 application remained pending until September 13, 2006, and thus was co-pending with the '186 application when it was filed on September 12, 2006. As discussed above, the abandonment of the '056 application on June 14, 2006 resulted from an inadvertent failure to pay the three-month extension of time fee. Further, the undersigned was unaware of the June 14, 2006 abandonment date for all of the

Appln. No. : 08/997,195
Group Art Unit : 1638
Filed : January 23, 2004

reasons discussed above. Once the issue was discovered, this petition was diligently prepared and promptly filed. Accordingly, the entire delay in filing the required reply, from the due date for the reply until the filing the enclosed Petition to Revive was unintentional. The undersigned respectfully submits that the enclosed Petition to Revive is thus grantable.

Because the abandonment on June 14, 2006 was unintentional, revival of the '056 Application during the three months between June 13, 2006 and September 13, 2006 would thus resolve the priority claim issue. The undersigned therefore submits the attached Petition to Revive under 37 C.F.R. §1.137(b), and all relevant fees.

IV. Conclusion

In view of the foregoing, Applicants request the Office to grant the attached Petition to Revive under 37 C.F.R. §1.137(b).


The Commissioner is authorized to charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: June 8, 2009

By:



Marc T. Morley
Registration No. 52,051
Attorney of Record
Customer No. 20,995
(619) 235-8550

7246238
060509

EXHIBIT A

UTILITY APPLICATION

Attorney Docket No.: MAIWAM6.001CIDV1

First Named Inventor: Inge Gaue

Title: MALE STERILITY IN GRASSES OF THE GENUS
LOLIUM

Express Mail Label No.: EV 465566144 US

Direct all correspondence to Customer No.: 20995

Date: September 12, 2006

Page 1

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The following enclosures are transmitted herewith to be filed in the patent application of:

Inventor(s):

1. Inge Gaue

2. Heinrich Baudis

113264 U.S. PTO
11/520186

091206

APPLICATION:

- (X) Specification in thirty-seven (37) pages.
 (X) Drawings in three (3) sheets.
 (X) Declaration by Inventors in two (2) pages.
 (X) Copy from parent application
 (X) Sequence Submission Statement in one (1) page, and
 (X) Sequence Listing on paper in five (5) pages
 (X) Sequence Listing in CRF

CONTINUITY INFORMATION:

| Application | Relationship | Parent App. No. | Filing Date | Status |
|------------------|-----------------|-----------------|-------------|---------|
| This Application | Divisional of | 10/764,056 | 01/23/04 | Pending |
| 10/764,056 | Continuation of | PCT/EP02/08252 | 07/24/02 | Closed |

Reference to prior domestic applications is made in the:

- (X) Specification.

FOREIGN CONTINUITY INFORMATION:

| Country | Application No. | Filing Date | Priority Claimed |
|---------|-----------------|-------------|------------------|
| Germany | 101 36 378.8 | 07/26/01 | Yes |
| | | | |

OTHER APPLICATION PARTS:

- (X) Return prepaid postcard.

UTILITY APPLICATION

Attorney Docket No.: MAIWAM6.001C1DV1

First Named Inventor: Inge Gaue

Title: MALE STERILITY IN GRASSES OF THE GENUS
LOLIUM

Express Mail Label No.: EV 465566144 US

Direct all correspondence to Customer No.: 20995

Date: September 12, 2006

Page 2

FILING FEES:

| FEE CALCULATION | | | | |
|----------------------|--------------|---------------------------|----------------------|---------------|
| FEE TYPE | | FEE CODE | CALCULATION | TOTAL |
| Basic Utility | 1.16(a)(1) | 1011 (\$300) | | \$300 |
| Search Fee | 1.16(k) | 1111 (\$500) | | \$500 |
| Examination Fee | 1.16(o) | 1311 (\$200) | | \$200 |
| Excess Claims > 20 | 14 - 20 = 0 | 1202 (\$50) | 0 x 50 = | \$0 |
| Independent > 3 | 3 - 3 = 0 | 1201 (\$200) | 0 x 200 = | \$0 |
| Application Size Fee | 45 - 100 = 0 | 1081 (\$250) ^a | 0 x 250 = | \$0 |
| | | | TOTAL FEE DUE | \$1000 |

(X) A check in the amount of \$1000 to cover the Total Fee Due is enclosed.

The Commissioner is hereby authorized to charge any additional fees which may be required, now or in the future, or credit any overpayment to Account No. 11-1410.

Marc T. Morley
Registration No. 52,051
Attorney of Record
Customer No. 20,995
(619) 235-8550

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

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Marc T. Morley

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

SUBMISSION BY "EXPRESS MAIL"

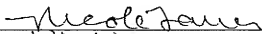
Attorney Docket No. : MAIWAM6.001C1DV1
Applicant(s) : Gaue, et al.
For : MALE STERILITY IN GRASSES OF THE
GENUS LOLIUM
Attorney : Marc T. Morley
"Express Mail" Label No. : EV 465566144 US
Date of Deposit : September 12, 2006

The following documents are hereby placed into an Express Mail envelope bearing the number indicated above, which envelope is being deposited today with the U.S. Postal Service as Express Mail:

Transmittal letter; specification in thirty-seven (37) pages; three (3) sheets of drawings; Declaration by Inventor in two (2) pages; Sequence Submission Statement in one (1) page; Sequence Listing on paper in five (5) pages; Sequence Listing in CRF; Check(s) for Filing Fee(s); Return Prepaid Postcard.

The envelope, with the enclosures listed above, is addressed the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

This submission is being made in compliance with 37 CFR 1.10.


Name: Nicole Lave
Docketing Agent

2920746 sma091206

San Diego
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

San Luis Obispo
805-547-5580

EXHIBIT B

10/764,056 Male sterility in grasses of the genus lolium

06-06-

2009::00:01:44

Transaction History

| Date | Transaction Description |
|------------|--|
| 10-17-2006 | Mail Abandonment for Failure to Respond to Office Action |
| 10-16-2006 | Abandonment for Failure to Respond to Office Action |
| 03-13-2006 | Mail Final Rejection (PTOL - 326) |
| 03-06-2006 | Information Disclosure Statement (IDS) Filed |
| 03-06-2006 | Information Disclosure Statement (IDS) Filed |
| 03-06-2006 | Final Rejection |
| 12-15-2005 | Request for Foreign Priority (Priority Papers May Be Included) |
| 01-04-2006 | Date Forwarded to Examiner |
| 12-15-2005 | Response after Non-Final Action |
| 09-12-2005 | Mail Non-Final Rejection |
| 09-06-2005 | Non-Final Rejection |
| 01-23-2004 | Information Disclosure Statement considered |
| 07-20-2005 | Date Forwarded to Examiner |
| 07-13-2005 | Response to Election / Restriction Filed |
| 07-13-2005 | Request for Extension of Time - Granted |
| 05-12-2005 | Mail Restriction Requirement |
| 05-11-2005 | Requirement for Restriction / Election |
| 08-23-2004 | IFW TSS Processing by Tech Center Complete |
| 01-23-2004 | Reference capture on IDS |
| 01-23-2004 | Information Disclosure Statement (IDS) Filed |
| 01-23-2004 | Information Disclosure Statement (IDS) Filed |
| 08-23-2004 | Case Docketed to Examiner in GAU |
| 06-29-2004 | Application Return from OIPE |
| 06-29-2004 | Application Return TO OIPE |
| 06-29-2004 | Application Dispatched from OIPE |
| 06-29-2004 | Application Is Now Complete |
| 06-07-2004 | Additional Application Filing Fees |
| 06-07-2004 | A statement by one or more inventors satisfying the requirement under 35 USC 115, Oath of the Applic |
| 04-09-2004 | Notice Mailed--Application Incomplete--Filing Date Assigned |
| 03-09-2004 | Cleared by OIPE CSR |
| 02-12-2004 | CRF Is Good Technically / Entered into Database |
| 02-05-2004 | IFW Scan & PACR Auto Security Review |
| 01-23-2004 | CRF Disk Has Been Received by Preexam / Group / PCT |
| 01-23-2004 | Initial Exam Team nn |

Close Window

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Filed : January 23, 2004
Title : MALE STERILITY IN GRASSES
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Examiner : Keith O'Neal Robinson
Group Art Unit : 1638

PETITION FOR EXTENSION OF TIME**Mail Stop Petitions**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Dear Sir:

This paper is being submitted in connection with a Petition to Revive the above-referenced patent application. Applicants currently petition to extend the time for response for the Office Action dated March 13, 2006, under 37 CFR § 1.136(a)(1), for three months to September 13, 2006. The three-month extension fee of \$1110 is enclosed herewith. Please charge any additional fees or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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